

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MARIO VILLA,) Case No. EDCV 15-1743 DSF(JC)
12 Plaintiff,)
13 v.) MEMORANDUM OPINION AND
14 FNU RAPISI, et al.,) ORDER DISMISSING ACTION
15 Defendants.)
16

17
18 On August 28, 2015, plaintiff Mario Villa (“plaintiff”), a state prisoner who
19 is proceeding *pro se* and has been granted leave to proceed *in forma pauperis*, filed
20 a civil rights complaint pursuant to 42 U.S.C. § 1983 (“Complaint”) which names a
21 single defendant – San Bernardino County Sheriff’s Deputy Rapisi (“Rapisi”) in his
22 individual capacity only.¹ On August 28, 2015, the Court issued an Order Re:
23 Service of Process by U.S. Marshal (“August Order”) directing plaintiff to complete
24 and to return to the Clerk of the Court, a USM-285 Form for Rapisi and to file a
25 Notice of Submission on or before September 11, 2015, indicating that the
26 completed USM-285 Form had been provided to the Clerk of the Court.
27

28 ¹Plaintiff also sues a single unnamed “Doe” defendant.

1 As plaintiff failed to provide the completed USM-285 Form to the Clerk of
2 the Court or to file a Notice of Submission by September 11, 2015, the Court, on
3 October 6, 2015, issued an Order to Show Cause (“OSC”) directing plaintiff, by no
4 later than October 21, 2015, to show good cause in writing, if any exists, why this
5 case should not be dismissed based on plaintiff’s failure to provide accurate and
6 sufficient information to enable the United States Marshal’s Service to effect
7 service of the summons and the Complaint upon Rapisi, plaintiff’s failure to
8 prosecute this action, and/or plaintiff’s failure timely to comply with the August
9 Order. The OSC expressly cautioned plaintiff in bold-face print that the failure
10 timely to comply with the OSC and/or to show good cause, might result in the
11 dismissal of this action. Although the deadline to comply with the OSC expired
12 more than two weeks ago, plaintiff has not responded thereto. Nor has plaintiff
13 submitted a completed USM-285 Form and a Notice of Submission or otherwise
14 communicated with the Court since the issuance of the OSC.

15 An incarcerated *pro se* plaintiff, proceeding *in forma pauperis*, is entitled to
16 rely on the United States Marshal’s Service (“USMS”) for service and should not be
17 penalized by having his action dismissed for failure to effect service where the
18 USMS has failed to perform its duties. Puett v. Blandford, 912 F.2d 270, 275 (9th
19 Cir. 1990). Nevertheless, a plaintiff relying upon the USMS for service must
20 provide the necessary information to effectuate service. Id. Where a *pro se*
21 plaintiff fails to provide the USMS with accurate and sufficient information to
22 effect service of the summons and complaint, a court may dismiss the unserved
23 defendant *sua sponte*. Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th Cir. 1994),
24 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). Here,
25 plaintiff has not done so.

26 Moreover, it is well-established that a district court has authority to dismiss a
27 plaintiff’s action because of his failure to prosecute or to comply with court orders.
28 See Fed. R. Civ. P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962);

1 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915
2 (1992). In determining whether to dismiss an action for failure to prosecute or
3 failure to comply with court orders, a district court must consider several factors:
4 (1) the public's interest in expeditious resolution of litigation; (2) the court's need
5 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy
6 favoring disposition of cases on their merits; and (5) the availability of less drastic
7 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to
8 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

9 This Court finds that the first two factors – the public's interest in
10 expeditiously resolving this litigation and the Court's interest in managing the
11 docket, weigh in favor of dismissal since plaintiff has not submitted the requisite
12 information to enable the Complaint to be served as directed, has not filed a
13 response to the OSC, and has not otherwise communicated with the Court regarding
14 this matter since the issuance of the OSC. The Court cannot hold this case in
15 abeyance indefinitely awaiting plaintiff's response to the Court's directives. The
16 third factor, risk of prejudice to defendants, also weighs in favor of dismissal since
17 a presumption of injury arises from the occurrence of unreasonable delay in
18 prosecuting an action. In re Eisen, 31 F.3d at 1452-53; Anderson v. Air West, Inc.,
19 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, the public policy favoring
20 disposition of cases on their merits, is greatly outweighed by the factors in favor of
21 dismissal discussed herein. Finally, as this Court has already cautioned plaintiff of
22 the consequences of failing to prosecute this action and afforded him the
23 opportunity to do so, and as plaintiff has not responded, no sanction lesser than
24 dismissal is feasible.

25 Accordingly, it is ORDERED that this action be dismissed based on
26 plaintiff's failure to prosecute and failure to comply with the Court's orders.

27 DATED: _11/9/15

28 

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE